

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1029 OF 1988

The State of Maharashtra,
through the Spl. Land Acquisition
Officer, No.6, Krishna Dhom (Kanher)
Project, Satara, Wai.

....Appellant

V/s

Shri Namdeo Ramchandra Deshmukh
since deceased through his Legal heirs:

1-A) Sou. Suman Jivaraj Kadam @
Sou. Suman Namdeo Deshmukh
Age 52 yrs.

R/o. 210-B, Karanje Peth,
Satara, Tal. & Dist. Satara

(Amendment carried out as per Court
Order dtd. 8/03/06 in C.A. No.5235/03
in F.A. No. 1029/88)

....Respondent.

Mr. Bharat Mehta, AGP for the appellant - State.

None for the Respondent.

CORAM: V.M. KANADE, J.

DATE : 10th October, 2007.

ORAL JUDGMENT:

1. Heard Mr. Mehta, the learned AGP appearing on behalf of the appellant - State. None appears on behalf of the respondent.

2. State has filed this appeal, challenging the judgment and order passed by the Civil Judge. Senior Division, Satara in Land Reference No. 30 of 1982. The Reference Court awarded enhanced compensation of Rs 33,732.20 paise with interest @ 15% from 14th May, 1983 if the payment was made within 3 months. However, in failure to make payment, it was directed that the claimant would be entitled to claim interest @ 15% p.a. on the amount of Rs 33,732.20 paise till the date of its realization.

3. The learned AGP appearing on behalf of the Government has submitted that the Reference itself was barred by limitation. State has not taken this ground in its appeal memo and, for the first time, this objection is being raised across the bar. In my view, State cannot be permitted to raise the ground of limitation for the first time across the bar. There is no application for amendment of the memo of appeal made at any time during the pendency of this appeal. The learned AGP submitted that the claimant was not entitled to get interest @ 12% per annum as per section 23 (1-a) of the said Act since the awarded was passed prior to the amendment of 1982 and in view of the judgment of the Apex Court in Kashiben Bhikabai and Others Vs. Special Land Acquisition Officer and another, reported in (2002) 2 SCC 605, the order passed by the Reference Court is liable to be set aside to that extent. This submission will have to be accepted. Para 17 of the judgment of the Apex Court in the case of Kashiben Bhikabai (supra) reads as under:-

“17. Counsel appearing for claimants contended that the claimants would be entitled to an additional compensation @ 12% as provided under section 23(1-A) of the Act. This contention cannot be accepted in view of a Bench decision of this Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* [1 (1989) 2 SCC 754] which held that additional compensation under Section 23(1-A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and the award was made by the Collector prior to 30-4-1982. If the Collector made the award before 30-4-1982 then the additional amount under Section 23(1-A) cannot be awarded. The pendency of the acquisition proceedings on 30-4-1982 before the Collector was essential for attracting the benefit under section 23(1-A) of the Act. It was held: (SCC pp 286-87, para 21)

“21. Entitlement of additional amount provided under section 23 (1-A) depends upon pendency of acquisition proceedings as on 30-4-

1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on 30-4-1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1) (b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after 30-4-1982 irrespective of the fact whether the Collector has made an award or not before 24-9-1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2)."

No judgment taking a contrary view to the above-referred case was cited before us. Accordingly, it is held that the appellants

would not be entitled to the additional compensation provided under Section 23(1-A) of the Act.”

In view of the judgment of the Apex Court in Kashiben Bhikabai (supra), since the award is passed in 1981, the claimant would not be entitled to claim interest @ 12% per annum. However, the claimant would be entitled to claim solatium @ 30% of the market value since the Reference Court had decided the Reference on 31st August, 1987 that is after the amendment Act of 1984 was passed. The learned AGP Mr. Mehta then submitted that the Reference Court had erred in granting interest @ 15%. He invited my attention to the finding recorded by the Reference Court wherein it has been stated that the claimant had accepted compensation on 31st May, 1982. That being the position, the claimant would be entitled to claim interest @ 9% and not 15%. The order of Reference Court is accordingly modified. State to pay enhanced compensation of Rs 33,732.20 paise to the claimant @ 9% from the the date of taking possession until it has been so paid or deposited. However, it is clarified that if the compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession was taken then interest @ 15% per annum shall be payable from the date of expiry of the said period of one year or amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. With this

modification, the first appeal is partly allowed in the above terms.

(V.M. KANADE, J.)